



67

115

COM

DUTY

A  
971.5  
7896

STATE.....

.....No. 15.

1152

# REPORT

OF THE

COMMITTEE ON PUBLIC LANDS,

ON THE SUBJECT OF THE

NORTH EASTERN BOUNDARY.

**Boston :**

BUTTON AND WENTWORTH, PRINTERS TO THE STATE.

No. 4, Exchange Street.

1868

210

T

si  
C  
C  
P  
to  
a  
C  
c  
L  
C

## **Commonwealth of Massachusetts.**

---

IN SENATE, FEB. 9, 1832.

THE Committee on Public Lands, to whom was referred so much of the Governor's Message at the opening of the present session of the General Court, as relates to the North-Eastern Boundary of the United States, and also a subsequent Message enclosing a communication from the Governor of Maine, with accompanying documents relating to that subject, have considered the same, and respectfully submit the following

### **REPORT.**

In the part of his Message at the opening of the session, which relates to the North-eastern boundary, the Governor intimates that it may be expedient for the General Court to express their opinion, how far the proceedings of the King of the Netherlands, in regard to the matters referred to him in pursuance of the fifth article of the treaty of Ghent, are binding upon the Government of the United States, and upon the States of Massachusetts and Maine. The Resolutions of the Legislature of the latter State, which accompany the Governor's subsequent Message, declare in strong

terms, that these proceedings are not obligatory, and request the co-operation of this Commonwealth in such measures, as may be best calculated to prevent the adoption of the boundary line, recommended by the King. Massachusetts is in fact directly interested in the question by her right of property in a considerable portion of the territory, which would be cut off from the State of Maine by that line; and as the Senators and Representatives of the Commonwealth in Congress, will be called upon in the regular discharge of their duties, to concur in the action of the General Government upon this subject, it is proper and expedient that they should be distinctly informed of the views of their constituents. In presenting the result of their inquiries into this important subject, the Committee will first briefly state the facts in the case, as far as may be necessary for the present purpose, and afterwards add for the consideration of the General Court, the conclusions to which those facts appear to lead.

The Committee have not thought it necessary to recapitulate on this occasion, the history of the controversy between Great Britain and the United States, respecting the North-Eastern boundary. This is a matter of public notoriety, and has also no bearing upon the present inquiry. The objection to the proceedings of the King of the Netherlands, has no connexion with the merits of the case as between the two parties. If the King has given a decision upon the points referred to him, it is admitted that this decision, however erroneous it may appear to the Government of the United States, is binding—supposing the points referred to be such as the Government of the United States has a right to submit to arbitration. If the King has not given a de-

t obligatory, and  
onwealth in such  
to prevent the  
amended by the  
ly interested in  
a considerable  
be cut off from  
as the Senators  
th in Congress,  
charge of their  
eneral Govern-  
expedient that  
views of their  
their inquiries  
tee will first  
as may be ne-  
wards add for  
ne conclusions

ecessary to re-  
f the contro-  
ed States, re-  
is is a matter  
ng upon the  
ceedings of  
ion with the  
ties. If the  
referred to  
er erroneous  
ited States,  
be such as  
a right to  
given a de-

cision upon the points referred to him, it is equally ap-  
parent that the rights of the two parties remain in the  
same state in which they were before the reference; and  
are in no way affected by any recommendation which  
his Majesty may have thought proper to give in regard  
to points which were not referred to him. This remark  
would be true upon the ordinary principles of natural  
law independently of any specific engagement, and it is  
also confirmed by the language of the treaty of Ghent,  
which expressly stipulates at the close of the fourth arti-  
cle, that "His Britannic Majesty and the Government of  
the United States, engage to consider the decision of the  
arbitrer as final and conclusive upon all the matters re-  
ferred to him;" thus excluding from any pretension to  
an obligatory character, any opinion or recommenda-  
tion which he might think proper to give upon any  
other subject. The most important point for considera-  
tion in the present inquiry is, therefore, whether the  
King of the Netherlands has or has not given a decision  
upon the questions referred to him, in relation to the  
North-Eastern boundary. In order to determine this  
question, it is of course only necessary to recur to the  
treaty of Ghent, and compare the terms of the submis-  
sion as therein stated, with those of the document con-  
taining the results of the King's proceedings.

The fifth article of the Treaty of Ghent provides,  
that, "whereas neither that point of the Highlands lying  
due North from the source of the river St. Croix, and  
designated in the former treaty of peace between the  
two powers as the North-West angle of Nova Scotia,  
nor the Northwesternmost head of Connecticut River,  
has yet been ascertained; and whereas that part of the  
boundary line between the dominions of the two Powers,

which extends from the source of the river St. Croix, directly North to the above-mentioned North-Western angle of Nova Scotia, thence along the said Highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean to the Northwesternmost head of Connecticut River, thence down along the middle of the river to the forty-fifth degree of North latitude, thence by a line due West on said latitude, until it strikes the river Iroquois or Cataraquay, has not yet been surveyed; it is agreed, that, for these several purposes, two Commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The same Commissioners shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said treaty of peace of 1783, and shall cause the boundary aforementioned, from the source of the river St. Croix to the river Iroquois or Cataraquay, to be surveyed and marked according to the said provisions. The said Commissioners shall make a map of the said boundary, and annex to it a declaration under their hands and seals, certifying it to be a true map of the said boundary, and particularizing the latitudes and longitudes of the North-West angle of Nova Scotia, of the Northwesternmost head of Connecticut River, and of such other points of the said boundary as they may deem proper; and both parties agree to consider such map and de-

claration as finally and conclusively fixing the said boundary. And, in the event of the said Commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements, shall be made by them or either of them, and such reference shall be made to a friendly Sovereign or State, in all respects as in the latter part of the fourth article is contained, and in as full a manner as if the same were herein repeated."

The part of the fourth article of the same treaty, which is here alluded to, as describing the form and manner in which the points in dispute are to be referred to the arbiter, is as follows :

"It is further agreed, that in the event of the two Commissioners differing upon all, or any of the matters so referred to them, or in the event of either or both of the said Commissioners refusing, or declining, or wilfully neglecting to act as such, they shall make, jointly or separately, a report or reports, as well to the Government of His Britannic Majesty as to that of the United States, in detail of the points on which they differ, and the grounds on which their respective opinions have been formed, or the grounds upon which they, or either of them, have so refused, declined, or omitted to act. And His Britannic Majesty, and the Government of the United States, hereby agree to refer the report, or reports, of the said Commissioners, to some friendly Sovereign, or State, to be then named for this purpose, and who shall be requested to decide upon the differences, which may be stated in the said report or reports, or upon the report of one Commissioner, together with the grounds upon which the other Commissioner shall have refused, declined, or omitted to

act, as the case may be; and if the Commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such friendly Sovereign or State, then such Sovereign or State shall decide *ex parte* upon the said report alone. And his Britannic Majesty, and the Government of the United States, engage to consider the decision of such friendly Sovereign or State to be final and conclusive on all the matters so referred."

It results from the terms of these articles, and leaving out of view that part of the fifth relating to the North-westernmost head of Connecticut River, and the boundary thence to the Iroquois, which is not material to the present purpose, that the duty which devolved upon the Commissioners, appointed under the fifth article, was to ascertain and define that point of the Highlands lying due North of the source of the river St. Croix, which was designated, in the former treaty, as the North West angle of Nova Scotia, and to cause that part of the boundary line, between the dominions of the two powers, which extends from the source of the river St. Croix, due North to the above-mentioned North West angle of Nova Scotia, thence along the said Highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the Northwesternmost head of Connecticut River, to be surveyed and marked according to the provisions of the treaty. No authority is given to the Commissioners to ascertain and determine the respective positions of the Highlands, or of the source of the river St. Croix. Both these are supposed to be known. The position of the source of the river St.

Commissioner so  
shall also wilfully  
he has so done,  
may be referred -  
such Sovereign  
aid report alone.  
ernment of the  
ecision of such  
and conclusive

os, and leaving  
to the North-  
and the boun-  
ot material to  
evolved upon  
fifth article,  
o Highlands  
r St. Croix,  
as the North  
that part of  
of the two  
f the river  
ned North  
said High-  
hemselves  
h fall into  
head of  
l accord-  
hority is  
etermine  
e source  
ed to be  
iver St.

Croix had in fact been determined by a special convention, and no question had ever been raised as to that of the Highlands, which was laid down in all the maps, and described in a variety of official documents, emanating from the British government, as stretching from the Western extremity of the Bay des Chaleurs, along the South side of the river St. Lawrence, at a distance from it of twenty or thirty miles. The duty of the Commissioners was therefore, as has been already said, to ascertain and determine the point where a line, drawn due North from the source of the St. Croix strikes the Highlands, and to cause the boundary line, which, according to the treaty, was to run Westerly from that point along the Highlands to be surveyed. Should the Commissioners differ upon any of the matters referred to them, they were to make report to their respective governments of the points on which they differed, and an arbiter was to be appointed, who was to decide on view of these reports, the points of difference therein stated.

The Commissioners, appointed for this purpose, having disagreed, and made reports as required by the treaty to their respective governments, it was determined by the convention of Sept. 29, 1827, that the points in dispute in regard to this subject should, in conformity to the further provisions of the treaty, be referred to a friendly sovereign. The language of the convention is as follows:

"It is agreed, that the points of difference which have arisen in the settlement of the boundary between the American and British dominions, as described in the fifth article of the treaty of Ghent shall be referred, as therein provided, to some friendly sovereign or state,



who shall be invited to investigate and make a decision upon such points of difference.

It was farther provided, in another article of the same convention, that, as the reports of the Commissioners were too voluminous to be conveniently examined by the arbiter, "new and separate statements of the respective cases severally drawn up by each of the contracting parties" should be substituted for them as the basis of the decision. These new statements were accordingly prepared on each side, and, the king of the Netherlands, having been agreed upon as the arbiter, were laid before him by the Plenipotentiaries of the two Governments. It is to these statements that we are to look immediately for information in regard to the points which the king was authorized to decide. In stating the result of their examination of these documents, the Committee leave out of view, as before, all that relates to other questions not material to the present purpose, and confine themselves to the points of difference in regard to the North-Eastern boundary.

In the introductory part of his award, the king says, that the two parties had agreed upon a statement of the points of difference between them. In reality, however, these points, and particularly that relating to the North-Eastern boundary are somewhat differently stated by the two parties. According to the American Statement, the point of "difference is the North-West angle of Nova Scotia, and the boundary line contemplated by the treaty of 1783, extending from that angle along certain Highlands to the Northwesternmost head of the Connecticut River." The British statement gives the point as follows. "The parties differ respecting the point designated in the treaties as the North-West angle

of Nova Scotia, and respecting the Highlands along which the line of boundary is to be carried, which is destined to divide the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic Ocean." Neither of these statements is precisely accurate in form; but the British differs from the other in representing the position of the Highlands as one of the points in dispute. The king, in his award, conforms to the British Statement, and specifies the questions at issue in the following terms: "Which is the place designated in the treaties as the North-West angle of Nova Scotia, and what are the Highlands dividing the rivers that empty themselves into the river St. Lawrence, from those that fall into the Atlantic Ocean, along which is to be drawn the boundary line from that angle to the Northwesternmost head of Connecticut River?"

Notwithstanding the variation between the modes of expression of the British and American Commissioners, they agree substantially in representing the situation of the Highlands, as the principal point upon which they had differed. The Committee have already remarked, that it certainly was not the intention of the parties to the treaty of Ghent, that any question should be made upon this subject. When the British Commissioners advanced the extravagant and preposterous pretension, that the Highlands were situated in a level region in the middle of the State of Maine, the American Commissioners, might perhaps with propriety have declined to negotiate upon this point. Instead of this, however, they undertook to refute the British argument, and finally consented to refer it to the arbiter. The King being authorized to decide upon all the questions specified in the statement, was of course justified in

considering the situation of the Highlands, as one of the points referred to him : and had he given a decision in favor of the British pretensions, the Government of the United States would have been bound to acquiesce in it, except so far as it might have been considered originally null and void, for want of any constitutional power in the Government of the United States, to authorize the submission to a foreign arbiter of the question so decided.

The King, however, gave no decision upon this or any other question relating to the North-Eastern boundary. After stating the question to be, as above represented :—What is the North-west angle of Nova Scotia, and what are the Highlands which divide the waters that empty themselves into the river St. Lawrence from those that fall into the Atlantic Ocean?—His Majesty proceeds to recapitulate at considerable length, the arguments which have been urged by the two parties in favor of their respective pretensions, compares their forces, and finally concludes that there is not sufficient evidence on either side, to justify a decision. The language of this part of the award, according to the translation officially communicated from the Department of State, is as follows :

“The arguments adduced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one [*either*] of the two lines respectively claimed by the High Interested Parties, as the boundaries of their possessions, from the sources of the river St. Croix, to the Northwesternmost head of the Connecticut river ; and the nature of the difference, and the vague and not sufficient determinate stipula-

tions of the treaty of 1783, do not permit to adjudge either of those lines to one of the two parties, without wounding the principles of law and equity in regard to the other."

The Convention of 1827, had contemplated and provided for the case in which the arguments and facts contained in the statements, should not be considered by the arbiter as sufficiently satisfactory to authorize a decision in favor of either party. Under these circumstances, he was to be furnished with such additional elucidations, whether of the facts or principles in question, as he might deem necessary. The article containing this stipulation, is as follows :

"In order to facilitate the attainment of a just and sound decision on the part of the arbiter, it is agreed that in case the said arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him, the requisition for such elucidation or evidence shall be simultaneously made to both parties, who shall thereupon be permitted to bring further evidence, if required, and to make each a written reply to the specific questions submitted by the said arbiter, but no farther, and such evidence and replies shall be immediately communicated by each party to the other.

"And in case the arbiter should find the topographical evidence, laid, as aforesaid, before him, insufficient for a sound and just decision, he shall have the power of ordering such additional surveys to be made of any portion of the disputed boundary line, or territory, as he may think fit, which survey shall be made at the joint expense of the contracting parties, and be considered as conclusive by them."

The case here anticipated having actually occurred, it would have appeared natural, that the royal arbiter should have taken the course prescribed in the Convention, and called for additional evidence. Instead of this, after declaring, in the passage quoted above, that the statements, with which he has been furnished, were not sufficient to enable him to decide in favor of either party, he proceeds to assign reasons why he does not avail himself of the faculty afforded him by the Convention, of calling for additional evidence. The case, it seems, was not susceptible of any further elucidation.

"As has been already said, the question resolves itself into a selection to be made of a ground dividing the rivers that empty themselves into the River St. Lawrence, from those that fall into the Atlantic Ocean; and as the High Contracting Parties are agreed, with regard to the course of the streams delineated by common accord on the map A, and affording the only basis of a decision, therefore the circumstances upon which the decision (*must be founded*) could not be further elucidated, by means of fresh topographical investigations, nor by the production of additional documents."

The arbiter, having thus declared, that the case was not susceptible of a decision upon the evidence, with which he had been furnished, and also, that it was not susceptible of any further elucidation by means of additional evidence, seems to have had no alternative left, but to close the proceedings, and resign his functions, without giving any opinion. Instead of this, however, after alleging his inability to pronounce a decision in favor of the line claimed by either party, he attempts to settle the difference in another way, and recommends the adoption of an entirely new boundary, not previous-

ing actually occurred, that the royal arbiter prescribed in the Convention. Instead of quoted above, that been furnished; were in favor of either why he does not him by the Convention. The case, it her elucidation. question resolves it around dividing the River St. Lawrence; and agreed, with related by common only basis of a upon which the further elucidations, investigations, ents."

the case was evidence, with that it was by means of alternative in his function of this, how a decision e attempts commend previous-

ly contemplated, or claimed on either side, and having no pretence of foundation or support in the terms of any of the treaties. The language, which conveys this extraordinary recommendation, is as follows:

"We are of opinion, that it will be suitable to adopt, as the boundary of the two States, a line drawn due North from the River St. Croix, to the point where it intersects the middle of the channel of that river, ascending it to the point where the River St. Francis empties itself into the River St. John, down the middle of the channel of the River St. Francis, ascending it to the source of its Southwesternmost branch, which source we indicate on the map A, by the letter X, authenticated by the signature of our Minister of Foreign Affairs; thence a line drawn due West to the point where it unites with the line claimed by the United States of America, and delineated on the map A; thence said line to the point at which it coincides with that claimed by Great Britain, and thence the line traced on the map by the two powers to the Northwesternmost head of Connecticut River."

This recommendation terminates the King's proceedings in regard to the question of the North-Eastern boundary. According to the terms of the Treaty of Ghent, as above quoted, the two parties engage to consider the decision of the arbiter as final and conclusive on all the matters referred to him: and it is stipulated, in the convention of 1827, that the decision of the arbiter, when given, shall be taken as final and conclusive, and shall be carried, without reserve, into immediate effect, by Commissioners appointed for that purpose by the contracting parties. But, as this recommendation of an entirely new boundary is not a decision

of any of the points referred to the arbiter, and is declared by himself not to be so, it is of course not binding as a decision under the stipulations of the treaties. It is hardly necessary to add, that, as the mere recommendation of a friendly Sovereign, given without authority upon a point not submitted to him, it can have no obligatory character, however justly it may be entitled to the most respectful consideration. As the Committee cannot suppose that this will be considered by any one as a doubtful principle, they deem it unnecessary to multiply arguments in support of it. They will merely refer, in illustration of the abuses that would result from the adoption of a contrary principle, to the celebrated case of Bruce and Baliol, rival pretenders to the crown of Scotland, who submitted the decision of their respective claims to Edward I., then King of England, sometimes called the English Justinian. In this case, as in the one submitted to the King of the Netherlands by Great Britain and the United States, the arguments and evidence furnished by the parties, were not considered sufficient to authorize a decision in favor of either; and, in order that the difference might not remain unsettled, the English Justinian adjudged the crown of Scotland to himself. It will hardly be pretended, that this proceeding was conformable to the rules of national law; but it would have been fully justified by any principle which would give to the commendation of a new boundary by the King of the Netherlands an obligatory power over the governments of Great Britain and the United States. If an arbiter have a right to travel out of the record of the submission, and give opinions having the force of law, upon questions not referred to him, it is obvious, that there

are no limits to his authority, and that the reference, by two governments, of any question, however unimportant, to the arbitration of a third, amounts to a complete and unconditional surrender of the national rights and independence of both.

The recommendation of the king of the Netherlands is therefore not binding upon either government. It is nevertheless entitled to very respectful consideration. It is the suggestion of a friendly sovereign, made with the best intentions, and under an impression that the adoption of it would be mutually and equally advantageous to both the parties. Although it can have no obligatory character, it may be proper to inquire, whether it is right and expedient that the government of the United States should voluntarily accede to it, and give it effect.

Supposing the question of expediency to be entirely open, the Committee are unable to perceive any very strong reasons for deciding it in the affirmative. They are not aware, that any material inconvenience can result from a further delay in the survey of the North-Eastern boundary, as determined by the treaty of 1783, while the adoption of the recommendation of the king of the Netherlands would involve the sacrifice of a considerable tract of territory, and an acquiescence, to a certain extent at least, in pretensions on the part of the British agents, which are too extravagant to be regarded for a moment as entitled to serious attention. But the Committee will not enlarge upon the considerations belonging to the question of expediency, because they conceive that this question is precluded by the preliminary one of Constitutional right. The Government of the United States have no constitutional authority to

cede to a foreign state any portion of the territory belonging to any one of the states composing the Union, without the consent of such state. They can, without a violation of this rule, settle such questions relating to the boundaries of the Union as were left doubtful by the treaty of 1783, because it is only by the settlement of these questions, that the extent of the territory of the border states can be ascertained. But the situation of the Highlands, which, according to the treaties, form the northern boundary in this quarter, is not represented, either in the treaty of 1783, or in that of Ghent as a doubtful point. The latter treaty provides for ascertaining the point where a certain line strikes the Highlands, and for surveying another line which is described as running in a westerly direction along the Highlands. No provision is made for ascertaining the situation of the Highlands, which is spoken of as known. The Government of the United States had therefore no Constitutional right to allow it to be drawn in question by England, still less to submit it to arbitration; and had the King of the Netherlands decided against us on this question, the Committee believe, as they have already remarked, that the act would have been wholly null and void, from a defect of authority in the Government of the United States to make the submission. The only uncertainty which exists in regard to this part of the boundary, results from the want of an accurate survey of a line, the general course of which is well defined. The Government of the United States had a right to cause this line to be surveyed, without regard to the effect which the survey might have upon the extent of the supposed territory of Maine in that quarter. Farther than this, it had no authority to go, without

territory belonging to the Union, can, without any objection relating to the subject, be settled by the Government of the United States, in the situation of the territory, for the purposes, for the representation of the State of Ghent as for ascertaining the High-lands, described in the High-lands. The situation of the territory. Therefore no objection in question; against the fact that they have been wholly in the Government's possession. This part of the territory is well known, and had a regard to the ex-territory. Without

the consent of Massachusetts and Maine. But the acceptance of the recommendation would deprive these States of a large tract of territory which, under any imaginable result of the survey, would certainly belong to them, and it is therefore a measure which the Government of the United States has no right to adopt, without the consent of both States. As the State of Maine has solemnly protested against its adoption, it is wholly beyond the competency of the Government of the United States to adopt it, whatever might be the opinion of Massachusetts. But as Massachusetts is directly interested in the question as well as Maine, it is obviously proper, that her opinion also should be made distinctly known.

Under these impressions of the merits of the case, and of the course best fitted under present circumstances to promote the honor and interest of the Commonwealth, the Committee offer for the consideration of the General Court, the following preamble and resolves.

All which is respectfully submitted.

By order of the Committee,

A. H. EVERETT

## PREAMBLE AND RESOLVES.

WHEREAS the Commonwealth of Massachusetts, as proprietor of large tracts of land in the State of Maine, is directly interested in the measures that may be adopted by the Government of the United States, for the purpose of defining and settling the North-Eastern boundary thereof, and whereas, the subject being now under the consideration of the Government of the United

States, it is expedient that the General Court should express their opinion thereupon, to the end that the Senators and Representatives of the Commonwealth in Congress may be the better enabled to understand and give effect to the intentions of their constituents, therefore,

*Resolved*, by the Senate and House of Representatives, in General Court assembled, that the Government of the United States possesses the constitutional right to ascertain and settle, by negotiation with foreign powers, arbitration, or otherwise, such parts of the boundary lines of the said States, as were left doubtful by the Treaty of Peace of 1783, but that the said Government does not possess the constitutional right to alter, by negotiation with foreign powers, arbitration, or otherwise, the boundary lines of the said States, so far as the same were ascertained and settled by the said treaty, to the prejudice of the territorial or other rights of any State, without the consent of such State previously obtained.

*Resolved*, That, in the second article of the Treaty of Peace of 1783, it is agreed and declared, that the Northern boundary line of the United States begins at the point where a line, drawn due North from the source of the river St. Croix, strikes the Highlands, and that it runs in a Westerly direction along the said Highlands, which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean: that the situation of the said Highlands is, and was at the time of the conclusion of said treaty, a matter of public notoriety, the same being one of the great geographical features of the country, indicated

on all the maps, and repeatedly recognized in various official documents by the British Government: that, as far as the situation of the said Highlands is concerned, the Northern boundary line was ascertained and settled by the treaty of 1783, and that the Government of the said United States has no constitutional right to alter the same as then ascertained and settled, whether by negotiation with foreign powers, arbitration, or otherwise, to the prejudice of the territorial or other rights of any State, without the consent of such State previously obtained.

*Resolved*, That it was agreed, by the fifth article of the Treaty of Ghent, that Commissioners should be appointed, by the Governments of Great Britain and the United States, to survey the Northern boundary line of the said States, as ascertained and settled by the treaty of 1783, and that, in the event of a disagreement between the said Commissioners, the matters in dispute between them should be referred to some friendly Sovereign, to be named as arbiter, in the manner described in the said fifth article, but that it was not the intention of the said Governments, and is not provided or agreed in the said fifth article, that the said Commissioners should inquire into and determine the situation of the aforesaid Highlands, the same being, as aforesaid, a matter of public notoriety:—that the Government of the United States, in permitting the same to be made a question by the said Commissioners, and to be by them submitted to the arbitration of the King of the Netherlands, without the consent of Massachusetts and Maine previously obtained, exceeded its constitutional powers, and that any decision which the said King might have given upon said question, would have been entire-

ly null and void, for want of a constitutional power in the Government of the United States to make the submission.

*Resolved*, That it appears, from the document communicated to the Government of the United States by the said King, as the result of his proceedings in the arbitration committed to him, in conformity to the fifth article of the Treaty of Ghent, by the Governments of Great Britain and the United States, that the said King has not decided any of the questions relating to the North-Eastern boundary of the said States, which were submitted to him by the Commissioners of the two Governments, having declared, for reasons contained in the said document, that said questions are not susceptible of any decision; and that the aforesaid document, so communicated by the King of the Netherlands, not containing any decision of the questions submitted to him, as aforesaid, by the said Commissioners, is not binding upon the Governments of Great Britain and the United States, or either of them, as a decision, either by the ordinary rules of international law, or by the stipulations of the treaties, which settled the form of the arbitration.

*Resolved*, That the recommendation contained in the aforesaid document, so communicated by the King of the Netherlands, of an entirely new boundary line between certain parts of the possessions of Great Britain and the United States, being merely the suggestion of a friendly Sovereign, made without authority, upon a subject not submitted to him, though entitled to respectful consideration, is not obligatory upon either of the parties to the arbitration; and that the United States are not bound, either by the ordinary principles of international law, or by the stipulations of the treaties, which

settled the form of the arbitration, to adopt the said line, so recommended, as a part of their North-Eastern boundary.

*Resolved*, That the adoption of the said line, so recommended by the King of the Netherlands, as a part of the North-Eastern boundary of the United States, would deprive this Commonwealth and the State of Maine of large tracts of territory, which, upon any imaginable result of such survey of the Northern and Eastern boundaries, as is authorized by the Fifth Article of the Treaty of Ghent, belong respectively, in sovereignty and property, to the said State and the said Commonwealth.

*Resolved*, That the Government of the United States has no constitutional right to cede any portion of the territory of the States composing the Union, to any foreign power, or to deprive any State of any land, or other property, without the consent of such State, previously obtained; and that the adoption of the aforesaid new boundary line, recommended, as aforesaid, by the King of the Netherlands, without the consent, previously obtained, of the States of Massachusetts and Maine, would be a violation of the rights of jurisdiction and property, belonging respectively to the said States, and secured to them by the Federal Constitution; and that any act, purporting to have such effect, would be wholly null and void, and in no way obligatory upon the Government or people of either of the said States.

*Resolved*, That as the adoption, by the Government of the United States, of the aforesaid new boundary line, so recommended by the said King of the Netherlands, would deprive the Commonwealth of Massachusetts of large tracts of land, without equivalent, it is not expedi-



ent for the said Commonwealth to give consent thereto ; and that the General Court hereby solemnly protest against such adoption, declaring, that any act, purporting to have such effect, will have been performed without the consent of the Commonwealth, and in violation of the rights thereof, as secured by the Federal Constitution, and will be consequently null and void, and in no way obligatory upon the Government or people.

*Resolved*, That the General Court have received, with satisfaction, the communication made to them through His Excellency the Governor, from the Government of the State of Maine, of the proceedings of the said Government, upon this subject ;—that they reciprocate the friendly sentiments, which have been expressed on this occasion, by that Government, and will readily and cheerfully cooperate with the State of Maine, in such measures as shall be best calculated to prevent the adoption, by the Government of the United States, of the new boundary line, recommended, as aforesaid, by the King of the Netherlands.

*Resolved*, That the Senators of the Commonwealth, in Congress, be instructed, and the Representatives thereof requested, to use their influence to prevent the adoption, by the Government of the United States, of the aforesaid new boundary.

*Resolved*, That His Excellency the Governor be requested to transmit a copy of these Resolves, and of the Report preceding them, to each of the Senators and Representatives of the Commonwealth in Congress, to His Excellency the Governor of Maine, and to the Governors of all the other States in the Union.

IN SENATE, February 14, 1832.

Read twice and passed.

Sent down for concurrence,

WILLIAM THORNDIKE, *President.*

HOUSE OF REPRESENTATIVES, Feb. 15, 1832.

Read twice and passed.

W. B. CALHOUN, *Speaker.*

FEBRUARY 15, 1832.

Approved,

LEVI LINCOLN.

A True Copy

Attest,

*Edward D. Bangs*

*Secretary of the Commonwealth.*







